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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

S. G., Petitioner, v. THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent;	D057987 (San Diego County Super. Ct. No. JCM226850)
THE SAN DIEGO COUNTY DISTRICT ATTORNEY, Real Party in Interest.	

Petition for writ of mandate challenging juvenile court orders. Lawrence Kapiloff, Judge. Petition denied.

The San Diego County District Attorney filed a petition alleging that the minor was a person subject to juvenile court jurisdiction under Welfare and Institutions Code section 602 because he committed two robberies in July 2010. (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.) Counsel

sought the minor's release from custody at a contested detention hearing. The court initially issued bench warrants for two witnesses subpoenaed by the minor, but later recalled the bench warrants on grounds the minor had no right to subpoena witnesses for that hearing.

The minor's petition for writ of mandate seeks enforcement of the subpoenas, arguing that the victims' testimony was relevant to the question whether the minor was a danger to the community and should be released pending the jurisdictional hearing. We issued an order to show cause, but ordered that the juvenile court conduct a rehearing on detention "with the subpoenaed witnesses' compelled attendance." We noted that if the case posed a question of broad public interest that was likely to recur, we could exercise our inherent discretion to consider the merits of the minor's claim. (See *In re Dennis H.* (1971) 19 Cal.App.3d 350, 352, fn. 1.) Having considered the record and established case law, we deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Although the probation report and police reports are not part of the record before us in this writ proceeding, we assume they were part of the material considered by the juvenile court below. We also granted the People's unopposed request for judicial notice of the August 20, 2010, hearing. The parties generally agree on the following facts:

On July 27, 2010, just before midnight, Karen Mitchell was walking home from the trolley station. She reported that a young African-American male, later identified as Christopher B., snatched her purse. Two additional young men "surrounded" Mitchell during the incident. Mitchell told officers that she saw the minor and Danny B., the

young men who were standing nearby, put their hands under their sweatshirts or waistbands and believed they might have been armed.

Ten or fifteen minutes later, Lakeisha Keys was outside her home when an adolescent African-American male snatched her purse. Two other young men watched from the edge of her driveway. Keys described the robbers as wearing black hooded sweatshirts and dark shorts. The robber who approached her asked "What sect you from? . . . I'm strapped." He then displayed the handle of a firearm in his waistband. When Keys tried to close the front door, he put his foot in it and punched her in the face before taking her purse. The three young men fled from the scene.

Within minutes of the second robbery, police detained three teenage males who fit the description provided by Mitchell and Keys. At a curbside showup, Mitchell identified Christopher B. as the robber and the minor and Danny B. as the persons who stood nearby. Keys identified Danny B. as the person who took her purse, Christopher B. as one of the young men who stood in the driveway, but was unable to identify the minor as one of the people who was with them.

At the initial July 30, 2010, hearing on the section 602 petition, the minor denied the allegations and the court ordered him detained. On August 17, the minor requested a contested detention hearing pursuant to *Dennis H., supra,*19 Cal.App.3d 350. In the points and authorities filed in support of his request for immediate release, the minor argued that "[b]eing merely present does not constitute being a principal in a crime and it does not constitute being a danger to society." He also cited Mitchell's hearing impairment and suggested she "was only able to focus on one person at a time and thus

didn't perceive what [the minor] and DANNY [B.] were doing or may have been saying to CHRISTOPHER [B.]." At the hearing on August 20, 2010, the minor's counsel informed the court that she had subpoenaed the victims, Mitchell and Keys, but they had failed to appear. The court granted counsel's request for bench warrants to secure their appearance.

At the special hearing held on August 23, 2010, the deputy district attorney argued that the minor had no right to subpoena witnesses to appear at the contested detention hearing re-set for August 27, 2010. The minor's counsel argued in response that case law did not preclude the minor from presenting evidence as to dangerousness. She maintained Mitchell's testimony would be relevant because there were "issues regarding her ability to be able to perceive as to what happened that evening, and also, the actual closeness of the minors to her." The court agreed with the deputy district attorney that the minor had no right to bring in the victims to testify on the "question of a prima facie itself or on the other question of detention." It recalled both bench warrants.

DISCUSSION

The question before us is whether the minor was entitled to subpoena the alleged victims as witnesses at the contested detention hearing in the circumstances of this case. From our review of the record, it is clear that the minor claims he should have been released because he was only a bystander and did not aid and abet the crimes alleged in the section 602 petition. We therefore conclude this case is controlled by existing case law and the minor is not entitled to subpoena Mitchell and Keys for the purpose of showing he did not commit the offenses alleged in the petition.

Section 632, subdivision (a) provides that a minor taken into custody shall be brought before a judge or referee for a detention hearing "as soon as possible but in any event before the expiration of the next judicial day after a petition to declare the minor a ward . . . has been filed . . . ." At the detention hearing, "[t]he court will examine the minor, his or her parent, legal guardian, or other person having relevant knowledge, hear relevant evidence the minor, his or her parent, legal guardian, or counsel desires to present, and, unless it appears," among other things, "that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that he or she be detained . . . , the court shall make its order releasing the minor from custody." (§ 635.) The court may consider the "circumstances and gravity of the alleged offense," along with other factors, to determine whether detention is warranted. (§§ 635 & 636.) "The court may base its findings and orders solely on written police reports, probation reports, or other documents." (Cal. Rules of Court, rule 5.756(c); see *In re Larry W.* (1971) 16 Cal.App.3d 290, 293.)

The minor has a privilege against self-incrimination at the detention hearing. (§ 630, subd. (b).) In addition, he or she "has a right to confrontation by, and cross-examination of, any person examined by the court as provided in Section 635." (*Ibid.*) When the minor exercises the right to demand the physical presence of the persons who prepared the reports and other documentary evidence, "it becomes the duty of the court to see that those persons are present at the continued hearing or lose the right to rely on the written declarations and affidavits." (*Dennis H., supra,* 19 Cal.App.3d at p. 355.)

In re Luis M. (1986) 180 Cal.App.3d 1090 (*Luis M.*) considered the question whether a minor is entitled to confront the crime victims in addition to the persons who prepared the written reports in the case. (*Id.* at pp. 1092-1093.) The minor in *Luis M.* relied on *Edsel P. v. Superior Court* (1985) 165 Cal.App.3d 763 (*Edsel P.*). That case interpreted *Dennis H.* broadly to provide the minor with the right to confront any witness against him. (*Luis M., supra*, 180 Cal.App.3d at pp. 1091, 1093.) The court denied the minor's petition for writ of habeas corpus, rejecting *Edsel P's* reading of *Dennis H.* as "dicta" that "confuses the entire area." (*Luis M., supra*, 180 Cal.App.3d at pp. 1093-1094.) The *Luis M.* court continued: "[W]e follow *Dennis H.'s* guidelines on a detention rehearing. The minor is guaranteed the right to confront and cross-examine the authors of reports submitted to justify detention. Expanding the minor's rights to include confrontation and cross-examination of crime victims themselves would destroy the very purpose of a detention hearing. 'The purpose is to compel a detention hearing as soon as possible, and the statutory time limits afford little opportunity to subpoena witnesses for oral examination.' [Citation.]" (*Id.* at p. 1094.) *People v. Superior Court (Ronald H.)* (1990) 219 Cal.App.3d 1475 followed the lead of *Luis M.* in rejecting *Edsel P.*, stating that "[n]othing in *Dennis H.* requires the presence of percipient witnesses to the crimes charged." (*Id.* at p. 1477.) It also made clear that a juvenile detention hearing is not the equivalent of an adult preliminary hearing. (*Id.* at p. 1478.)

In the case before us, the minor relies on *In re Korry K.* (1981) 120 Cal.App.3d 967, a case published before *Luis M.* and *Ronald H.* were decided. The minor in *Korry K.* was charged assault with a deadly weapon, battery, and malicious mischief following a

incident at a convenience store. At the detention hearing, the court considered, among other things, the report prepared by the arresting officer. The police report described interviews with four witnesses, two of whom were the minor's friends, who gave contradictory accounts of what occurred. (*Id*. at p. 969.) After the court ordered the minor detained, the minor requested rehearing on the issue of detention. The officer who prepared the arrest report testified about the interviews he personally conducted with the victim and the minor's friends. The minor's counsel asked to call the other two witnesses who, according to the arrest report, had corroborated the victim's story. Counsel argued the testimony was relevant under section 635 and 636 because "if it could be shown that [the minor] had acted in self-defense and had not verbally abused the victim, that would indicate that there was no reason to detain [the minor]." (*Id*. at p. 970.) The trial court denied the request on grounds that the proffered testimony would amount to an affirmative defense which was irrelevant to issues considered at the detention hearing. (*Ibid*.) On petition for writ of habeas corpus, the court agreed with the minor's argument "that he was entitled to present evidence which demonstrated that he was not a danger to the community pending the jurisdictional hearing, even though the prima facie case had been established." (*Id*. at p. 971.) The court explained that it was "no basis for exclusion, that evidence which may demonstrate that a minor is not a danger to others pending the jurisdictional hearing, may also provide an affirmative defense at the jurisdictional hearing. Sections 635 and 636 clearly contemplate that the court consider such evidence." (*Ibid*.)

The minor's reliance on *Korry K.* is misplaced. *Luis M.* rejected the claim in *Edsel P.* that the minor was entitled to confront *any* witness against him on grounds broadening the requirements of a detention hearing was counter to the statutory purpose to conduct the hearing and resolve the detention issue as quickly as possible. (*Luis M., supra,* 180 Cal.App.3d at pp. 1093-1094.) *Luis M.* also calls into question the rationale of *Korry K.* which similarly expanded the category of witnesses subject to the minor's right of confrontation at the detention hearing. If *Korry K.* is correct that a minor may, in *some* circumstances, elicit testimony from persons other than writers of reports which is relevant to dangerousness as well as an affirmative defense, *Korry K.* would survive the decision in *Luis M.* It is possible that a victim could provide that type of testimony. However, *Korry K.* does not apply in the circumstances of *this* case. Here, the minor claimed that Mitchell's report of the events was suspect because of her hearing impairment and both victims' testimony would show he was "merely present" and not involved in the purse snatchings. Such testimony would be directly relevant to the question of the minor's guilt, a matter not before the court at the detention hearing. It was also cumulative of evidence contained in the probation and police reports. The proffered testimony from the two victims was only tangentially relevant to the question whether the minor's detention was "reasonably necessary for the protection of the person or property of another." (§ 635.) We therefore conclude the court did not abuse its discretion in recalling the bench warrants.

The minor also contends that revised Rules of Court, rules 5.752 through 5.764, unlike the former rules considered in *Luis M.* and *Ronald H.*, "do not restrict the minor to

only confronting and cross-examining the preparers of [the probation officers'] reports." However, even if we were to agree with the minor's reading of the rules, which we do not, court rules are not legal precedent.

DISPOSITION

The petition for writ of mandate is denied.

McINTYRE, Acting P. J.

WE CONCUR:

O'ROURKE, J.

IRION, J.